

Filed for intro on 02/16/95
House Bill _____
By _____

Senate No. SB1646
By Wallace

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 13, relative to real estate brokers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-13-102, is amended by adding the following as new, appropriately designated subdivisions:

(6) "Adverse facts" means conditions or occurrences generally recognized by competent licensees that significantly affect the value of real estate, significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property. "Adverse facts" also means information which indicates a party will not be able to, or does not intend to, complete the party's obligations in the transaction.

(7) "Client" means a party to a transaction with whom the broker has entered into a specific written agency agreement to provide services.

(8) "Customer" means any party other than a client in a transaction, for whom or to whom licensee provides services.

(9) "Designated agent" refers to a licensee who has been chosen by such licensee's managing broker to serve as the agent of an actual or prospective party to a transaction, to the exclusion of other licensees employed by or affiliated with such broker.

(10) "Dual agency" refers to a situation in which the licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse.

(11) "Limited agency" means an agency relationship created for the purpose of providing real estate services in which the client's liability for the actions or statements of the agent is limited to actions or statements initiated by specific instruction of the client or those actions or statements about which the client had knowledge.

(12) "Material" means any statement, representation or fact relative to a transaction that would affect a reasonable person's decision to enter into an agreement, and which has been identified by such person as being of significance to a particular party.

(13) "Transaction" means the purchase, sale, rental, or option of an interest in real estate or business opportunity.

(14) "Facilitator" means any licensee who assists one (1) or more parties to a transaction who has not entered into a specific written agency agreement to represent one (1) or more of the parties.

(15) "Party" means any person or persons seeking to obtain or divest an interest in real estate or a business opportunity as a buyer, seller, landlord, tenant, option grantee or option grantor.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 13, is amended by adding Sections 3 through 11 as new, appropriately designated sections.

SECTION 3. A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, such licensee shall be considered a facilitator and shall not be considered an agent of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of such agency or subagency relationship. A licensee shall immediately disclose such to any prospective customer or client.

SECTION 4.

(a) If a real estate licensee is engaged as an agent, such real estate licensee serves as a limited agent retained to provide real estate services to a client. Such licensee shall function as an intermediary in negotiations between the parties to a transaction unless such parties negotiate directly.

(b) A real estate licensee shall owe all parties to a transaction the duties enumerated in Section 5. A licensee shall owe to such licensee's client or customer the duties enumerated in Section 6.

(c) Notwithstanding any provision of law to the contrary, the duties enumerated in Section 5 and Section 6 shall supersede any fiduciary or common law duties owed by a licensee to such licensee's client upon the effective date of this act.

SECTION 5. A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties:

(1) To diligently exercise reasonable skill and care in providing services to all parties to the transaction;

(2) To disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge.

(3) To maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this act, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;

(4) To provide services to each party to the transaction with honesty and good faith;

(5) To provide to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction when such information is requested by a party;

(6) To timely account for trust fund deposits and all other property received from any party to the transaction;

(7)

(A) To not engage in self-dealing nor to act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction; and

(B) To not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of

1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received.

SECTION 6. Any licensee who acts as an agent in a transaction regulated by the Tennessee Real Estate Broker License Act of 1973 owes to such licensee's client in that transaction the following duties:

(1) To obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between licensee and licensee's client.

(2) To disclose to the client any adverse facts of which the licensee has actual notice or knowledge, other than confidential information and information which is known to the client;

(3) To be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities except where such loyalty duty would violate licensee's duties to a customer, under Section 5 or a licensee's duties to another client in a dual agency under Section 8.

SECTION 7.

(a) Prior to providing any real estate services to a client or customer in a prospective transaction, a licensee shall provide the client or customer with a written disclosure that delineates the licensee's duties to all parties under Section 5, the licensee's duties to clients under Section 6 and which party or parties, if any, in the transaction are clients of the licensee or such licensee's designated agent. This written disclosure shall also include the following statement: EVERY REAL ESTATE LICENSEE SHALL MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION RECEIVED FROM YOU BY THE LICENSEE PRIOR TO THE LICENSEE'S DISCLOSURE TO YOU OF A WRITTEN AGENCY OR SUBAGENCY AGREEMENT TO REPRESENT ANYONE IN A TRANSACTION TO WHICH YOU MAY BE A PARTY, EXCEPT FOR ADVERSE FACTS REQUIRED TO BE DISCLOSED UNDER TENNESSEE LAW. The licensee

may add additional agency information to supplement such required disclosure language.

(b) Immediately following delivery of the written disclosure, the licensee shall obtain a signed receipt for such disclosure from the party to whom it was provided.

(c) The disclosure of duties and relationships, as provided in subdivision (a), shall not be construed as, or be considered a substitute for, a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in Section 9.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose such licensee's role in the transaction, including any agency relationship, to any other licensee. If the licensee's role changes at any subsequent date, such licensee shall immediately notify any other licensees and any parties to the transaction relative to such change in status.

SECTION 8.

(a) A real estate firm or individual licensee may provide services as a dual agent in a transaction only with the prior written, informed consent of all of licensee's clients in the transaction. Such written consent from each party must include, and shall be considered "informed" if it includes the licensee's duties to client(s) and customer(s) under Section 5, the licensee's duties to client(s) under Section 6, and the party's signed consent to a dual agency relationship.

(b) In a dual agency a licensee owes each client the duties owed client(s) under Sections 5 and 6.

(c) There shall be no imputation of knowledge or information among or between clients and licensee in a dual agency situation.

(d) Prior written informed consent for dual agency shall be effective even though at the time a client consents such client does not know, and the written consent does not state, the identity of the other specific client(s) in the transaction, if:

(1) Each of the other specific clients in the transaction is identified to the buyer/tenant/option grantee prior to the licensee's preparation of the buyer's/tenant option grantee's offer, is identified to the seller/landlord/option grantor prior to the licensee's presentation of such offer to the seller/landlord/option grantor; and

(2) Buyer/tenant/option grantee or seller/landlord/option grantor is not the dual agent, a member of the dual agent's family, the dual agent's real estate firm, a real estate licensee employed by or affiliated with the dual agent, a member of the family of a real estate licensee employed by or affiliated with the dual agent, or an entity in which any such person has an ownership interest.

SECTION 9.

(a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee's managing broker, to the exclusion of all other licensees employed by or affiliated with such managing broker. A managing broker providing services under the provisions of the Tennessee Real Estate Broker License Act of 1973 shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.

(b) The use of designated agency does not abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker's responsibilities to

ensure that all licensees affiliated with or employed by such broker conduct business in accordance with appropriate laws, rules and regulations.

(c) There shall be no imputation of knowledge or information among or between clients, managing broker and any designated agent(s) in a designated agency situation.

SECTION 10. A client or other party to whom a real estate licensee provides services shall not be liable for damages for the misrepresentations of the licensee arising out of such licensee's services unless the client or party knew, or had reason to know, of the misrepresentation. This section shall not limit the liability of a licensee's managing broker for the misrepresentations of the managing broker's licensees.

SECTION 11. This act shall supersede common law to the extent common law is inconsistent with the provisions of this act.

SECTION 12. This act shall take effect on July 1, 1995, the public welfare requiring it.

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